IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

Natthi & Ors. **Versus** Ram Swaroop

S.B. CIVIL REVISION PETITION NO.1364/2001

DATE OF ORDER : 03/10/2006

Hon'ble Shri Justice Ajay Rastogi

Dr. P.C. Jain, for petitioners-defendants
Shri Sanjay Joshi, for respondent-plaintiff

BY THE COURT:

Instant revision petition has been filed against the order dated 30th July, 1998 whereby the petitioners were held guilty for committing contempt of the order of learned trial Judge, maintaining status quo passed on 18th June, 1992.

Application filed by the plaintiff-respondent under O.39 R.2A CPC was allowed by the learned trial court vide order dated 30th July, 1998 and the appeal preferred by the defendants-petitioners against the said order was dismissed by the learned First Appellate Court vide order dated 14th September, 2001. Hence, this revision petition.

The necessary facts, which require adjudication, are that a suit for permanent injunction was filed on 16th June, 1992 along with application for temporary injunction under O.39 R.1 & 2. After notice was served upon the defendants-petitioners, order of status quo was passed in reference to suit property [Chowk] on 18th June, 1992 till the next date of hearing i.e. 3rd October, 1992. But, on 3rd October, 1992 since the

Presiding Officer was on leave, the next date was fixed on 22nd October, 1992. The plaintiff-respondent filed application under O.39 R.2A on 22nd September, 1992 pointing out that the defendants-petitioners have deliberately disobeyed the order of the learned trial court, therefore, the action be taken against them for committing contempt.

The defendants-petitioners filed reply and pointed out that agreement to sale was made on 31st March, 1992 much before the order of status quo passed on 18th June, 1992 and since the order of injunction has not been extended after 3rd October, 1992 and only the next date has been fixed in the matter on 22nd October, 1992. The sale deed was executed in view of bonafide belief that injunction which was extended by the court which came to an end on 3rd October, 1992 itself.

Learned trial Judge after taking into consideration the material recorded a finding that if there was an agreement entered between the parties on 31st March, 1992, the defendants-petitioners were supposed to disclose this fact when the order of status quo was passed on 18th June, 1992 and since the Presiding Officer was on leave on 3rd October, 1992, the matter was posted to be heard on 22nd October, 1992, the injunction order, which was passed by the court by legal consequences extended further as such the action of the defendants-petitioners in getting the sale deed executed on 8th October, 1992 considered to be a deliberate disobedience of the order of learned trial court. Against which the petitioners preferred appeal and they also met the same fate.

Counsel for petitioners submits that the petitioners on bonafide belief proceeded to execute the sale deed on 8th October, 1992. Since the injunction

order, which passed by the court, came to an end on 3rd October, 1992 and only the matter was posted to be heard on 22nd October, 1992, but so far as the injunction order is concerned, that was not extended and under such bonafide belief, the petitioners executed the sale deed on 8th October, 1992 and this action cannot be said to be a deliberate disobedience of the order of the learned trial court. Counsel further informed this Court that the suit preferred by the plaintiff-respondent has been dismissed on 1st March, 2001.

Counsel for respondent, on the other hand, submits that the Presiding Officer was on leave on 3rd October, 1992 and when the matter was posted to be heard on 22nd October, 1992 the injunction order passed automatically stands extended and action of the defendants-petitioners during intervening period of executing the sale deed on 8th October, 1992 was clearly disobedience of the order of the learned trial court and in such circumstances, the learned trial Judge and so also the First Appellate Court have not committed any error in holding them guilty and passing appropriate order in exercise of power under O.39 R.2A CPC.

I have considered the submissions of both the parties and perused the material on record.

It is true that order of status quo passed on 18th June, 1992 which was operative upto 03.10.1992 and merely because Presiding Officer was on leave on 03.10.1992 it will not come to an end particularly when the next date was fixed on 22nd October, 1992.

But in the present matter, where the finding has been recorded of deliberate disobedience, undisputedly there was no express order maintaining the order of injunction passed by the trial court after 3rd October,

1992 and sale deed was executed on 8th October, 1992, it is difficult to hold that it was a case of deliberate disobedience committed by the defendants-petitioners. Moreso, the suit has also been finally dismissed as informed by the counsel for petitioners.

I do not find that it is a case of deliberate disobedience of the order passed by the learned trial Judge and in such circumstances, the finding recorded holding them guilty is not sustainable.

Consequently, the revision petition stands allowed and the orders of the learned trial Judge and so also of the First Appellate Court are hereby quashed and set aside. No order as to costs.

[Ajay Rastogi],J.

FRBOHRA,JR.P.A.